



THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL
ATTORNEY GENERAL

February 11, 1949

Hon. John T. Nicholson
County Attorney
Comanche County
Comanche, Texas

Opinion No. V-768

Re: The applicability of Article
4442, V.C.S., and Article 701,
V.P.C., relating to operation
of "maternity homes" to private
hospitals.

Dear Sir:

Reference is made to your recent request which reads in part as follows:

"The City of Comanche has a private hospital under the ownership and management of two brothers, acting as a partnership, and both licensed to practice medicine and surgery in the State of Texas. The hospital engages in the general practice of medicine and surgery, not specializing in any certain thing, and keeps patients in beds during treatment, and cares for and treats pregnant women, and delivers their children.

"The hospital was established under permission and authority of the City Council of Comanche, Texas, under the provisions of Art. 1015, Sec. 4, Vernon's Rev. Civ. Stats., 1925.

"

"Is such a hospital an institution covered by Art. 4442, Vernon's 1925 RCS, Acts 1921, p. 146; Acts 1935, 44th Leg., p. 294, ch. 108, Sec. 1, and by P.C. Art. 701?"

Articles 4442, Sec. 1., V.C.S., and 701 V.P.C., are as follows:

"Art. 4442. Maternity home

"1. Every individual, firm, association, or corporation, owning, keeping, conducting or managing an institution or home for the boarding or sheltering of infant children, or so-called

'Baby Farm,' or any lying-in hospital, hospital ward, maternity home or other place for the reception, care and treatment of pregnant women, and charging a fee or receiving or expecting compensation in the way of room rent or board, shall obtain an annual license which shall be issued by the State Board of Health without fee, shall not be transferable to other persons or other premises, and shall expire on the thirty-first day of December next following the issuance. The application for such license shall state the name and address of the licensee, the specific location of the building used, and the number of inmates which may be boarded there at one time, and shall be approved by the local health officer. No greater number of inmates shall be housed at one time in the building than is authorized by the license, and no pregnant woman or infant shall be kept in a building or place not designated in the license. A record of licenses issued shall be kept by the State Board of Health."

"Art. 701. Maternity home

"Any person, manager, keeper, or officer of any corporation, firm or association who shall keep or conduct any 'Baby Farm,' lying-in hospital, hospital ward, maternity home or place for the reception, care or treatment of pregnant women without first having obtained a license from the State Board of Health as provided by law shall be fined not less than fifty nor more than five hundred dollars and in addition thereto may be confined in jail not to exceed twelve months." Acts 1921, p. 147.

It is stated in 39 Tex. Jur. 228 that: "an emergency clause may be considered if it sheds light upon the inquiry and will aid the Court in ascertaining the legislative intent."

The emergency clause of Senate Bill 215, Acts of the 37th Legislature, R.S., 1921, (Art. 4442, V.C.S.) is in part as follows:

"Owing to the fact that the well-being of the public demands the regulation of the above mentioned places both from the standpoint of public health and from an ethical and moral standpoint and owing to the fact that no law at present time exists on the statute books of this

State adequately controlling such before mentioned place, creates an emergency and an imperative public necessity"

There is no general Hospital Licensing law in the State. However, over a long period the State Board of Health, the agency charged with enforcing the provisions under this Statute, has required that a hospital with a Maternity Ward be licensed under the provisions of Art. 4442, V.C.S., and it is the opinion of this office that such a construction placed upon the statutes is reasonable and sound. Since the Statute is ambiguous with respect to whether it applies to such an institution and there is no authority to the contrary, the departmental construction should be followed.

This rule was announced in the case of Texas Employers Insurance Association v. Holmes, 145 Tex. 158, 196 S.W. 2d 390, wherein Justice Sharp, speaking for the Court, stated as follows:

"If a statute is ambiguous and susceptible of more than one construction, there are certain well settled rules which govern its construction:

"First, the practical interpretation of the Act by the agency charged with the duty of administering it is entitled to the highest respect from the Courts. And this is especially so when that interpretation has been long continued and uniform."

In view of the foregoing it is our opinion that under the factual situation presented, such a hospital comes within the provisions of Articles 4442, V.C.S., and 701, V.P.C.

SUMMARY

A privately owned general hospital which has a maternity ward in which children are delivered and mothers are cared for is required to be licensed by the State Board of Health. Art. 4442, V.C.S. Art. 701, V.P.C.

Yours very truly,
ATTORNEY GENERAL OF TEXAS

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